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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

A.S.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU et
al.,

Real Party in Interest.

A155709

(Contra Costa County
Super. Ct. Nos. J17-00868, J17-00869)

Petitioner A.S. (Mother) files this petition for an extraordinary writ seeking review of the court order setting a hearing under Welfare and Institutions Code section 366.26¹ to consider termination of parental rights and a permanent plan for her seven-year-old twins, A.S. and T.S. Mother contends the juvenile court erred in concluding that the Contra Costa Children and Family Services Bureau (the Agency) made reasonable efforts to provide Mother services throughout the reunification period and in terminating her services after 12 months. We deny the writ petition on the merits.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise identified.

FACTUAL AND PROCEDURAL BACKGROUND

A. Dependency Petitions

On July 28, 2017, the Agency filed juvenile dependency petitions under section 300 for the twins. The petitions alleged Mother struck T.S. on the forehead and back of the head several times and slammed his head into the couch, causing him to vomit. The petition for T.S. alleged serious physical harm pursuant to section 300, subdivision (a), and the petition for A.S. alleged abuse of a sibling pursuant to section 300, subdivision (j). Both petitions alleged Mother failed to protect the twins pursuant to section 300, subdivision (b) due to Mother's mental health issues.

The court considered the following allegations in connection with the dependency petition. Mother and the twins were homeless and staying at a shelter when the incident of abuse occurred. Multiple people saw Mother strike T.S. in the head, and an employee of the shelter called the police. Shelter staff reported that the children were often seen unsupervised or in the company of drug users. The police took T.S. to the hospital, and Mother was arrested for cruelty to a child.

The children reported they often slept in a friend's truck and they had not eaten breakfast or lunch the previous day. Mother stated the children had slept in a truck the previous night and when she woke up, both children had black eyes. She stated she does not hit her children. She reported she did not have any mental health issues and has been clean since 2010.

Mother had ten prior referrals involving T.S. and A.S. The Agency recommended the court detain the children in an out of home placement. The court held a detention hearing and removed the twins from Mother and placed them in foster care. The court ordered supervised visitation but stated visits would be terminated if Mother discussed the case with the children or mentioned to them that they would be returned to her.

B. Jurisdiction/Disposition Report and Hearing

Prior to the disposition hearing, the court suspended Mother's visits with the twins because of Mother's behavior. Mother arrived two hours early for a visit and threatened to call the police. At the start of the visit, Mother was shouting and gesturing to the children's foreheads as if they were injured. Mother was belligerent and yelling, so the social caseworker ended the visit.

Mother's counsel requested a guardian ad litem be appointed for Mother, and the court granted the request.

In the jurisdiction and disposition report, the Agency reported Mother had failed to engage in services. The Agency made several calls for housing referrals with Mother and provided Mother a referral to therapy and drug testing. The Agency scheduled six drug tests, and Mother failed to appear each time. The Agency provided Mother with bus and BART tickets to attend appointments and tests. The report stated Mother needs mental health and substance abuse services if she wants to be reunited with her children.

Mother filed a notice of appeal from the juvenile court's disposition. Her counsel filed a no issues statement and the appeal was dismissed.

C. Termination of Reunification Services

Prior to the six-month review hearing, the Agency filed a motion under section 388 to terminate reunification services. The Agency had provided Mother a referral for a psychological assessment and made repeated attempts to contact her. Mother, however, had refused to make herself available during the six months leading up to the hearing. The mental health clinician attempted to contact Mother three times by phone and also by email. Mother had not complied with any aspect of her case plan. She had failed to engage in drug testing, drug treatment, or counseling.

In the six-month review report, the Agency noted that Mother demanded three million dollars from the social worker. She also stated she had been drugged and raped and was pregnant.

The court denied the motion and ordered services until the 12-month review hearing.

In the 12-month status report, the Agency again recommended the termination of reunification services. Mother had failed to engage in services. She had missed 18 drug tests. She failed to have a psychological evaluation or engage with the mental health clinician.

In August 2018, Mother went to the Concord Police Station to report her children missing.

At the 12-month review hearing the court terminated reunification services. The court noted that Mother's unstable mental health put the children at risk. In addition, there were prior allegations of sexual abuse, and the children had displayed behaviors consistent with being sexually abused.

Mother's counsel stated Mother "strongly objects to the [Agency's] recommendation to terminate reunification services." Counsel argued that Mother tries her best given her situation but that her struggles make it difficult to access services. Counsel stated Mother could benefit from more help. The court inquired what sort of help Mother would accept, because thus far she had refused to avail herself of the assistance offered to her. Counsel responded that Mother did not believe she needed mental health services. Her biggest struggle was homelessness.

The Agency stated that Mother had never raised any issues with her case plan. Mother had been provided with all the referrals necessary to complete the case plan. Both the social worker and the clinician had repeatedly reached out to Mother, but she was unresponsive.

The court noted that due to her mental health issues Mother is unwilling to trust the system or work with anyone to address her issues. "Mother . . . does not recognize her own mental health struggles, which her children do recognize, as her children during the first few visits were very frightened by their mother's behavior as mother has been destabilized for a significant period of time." The court found that Mother's homelessness is "simply a symptom of the underlying issues, which is mental health and substance abuse struggles."

The court stated the 18-month review hearing date was 90 days away, and in order to continue services, the court would have to find (1) Mother had made substantial progress and complied with all aspects of her case plan and (2) there is a substantial likelihood continued services could result in the children being returned to Mother. The court stated there was no evidence to support such findings. “[T]he only evidence before the Court is that mother continues to have untreated significant mental health issues and substance abuse issues and that she continues to be a substantial danger to the safety and welfare of her children.”

The court emphasized that the children deserved more permanency. The court set a section 366.26 hearing for February 6, 2019.

DISCUSSION

A. Standard of Review

We review the juvenile court’s finding that reasonable services were offered under the substantial evidence test. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) “We review the record in the light most favorable to the trial court’s order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on the clear and convincing evidence standard.” (*T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1239, citing *In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) “[O]ur sole task on review is to determine whether the record discloses substantial evidence which supports the juvenile court’s finding that reasonable services were provided or offered.” (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762).

B. Waiver

The Agency argues that Mother did not raise the reasonableness of her services before the juvenile court. Mother counters that she objected to the Agency’s recommendation to end reunification services.

A “parent’s failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 641.)

At the 12-month hearing, Mother’s counsel stated Mother “strongly objects to the [the Agency’s] recommendation to terminate reunification services.” Counsel argued Mother could benefit from more help. When the court asked what additional help Mother would accept given her refusal to avail herself of the assistance, counsel responded that Mother did not believe she needed mental health services.

Counsel never objected to the services offered by the Agency, but rather explained Mother’s mental health prevented her from accessing those services. On appeal, Mother raises an entirely new argument that the Agency should have diagnosed Mother with “anosognosia” — a mental health condition where the sufferer denies she has an illness. Counsel, however, never raised this issue in the months leading up to the 12-month review or sought additional or different services for Mother. Arguably Mother’s objection to the termination of services was a request for more or different services, but this occurred after more than a year of the Agency attempting to engage Mother. On this record, it appears Mother has waived the issue of the reasonableness of her services. In any event, even if we address the issue on the merits, we conclude there was substantial evidence to support the juvenile court’s order.

C. Termination of Reunification Services

The “ ‘adequacy of reunification plans and the reasonableness of the [Agency’s] efforts are judged according to the circumstances of each case.’ [Citation.] To support a finding reasonable services were offered or provided, ‘the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult. . . .’ ” (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426 (*Tracy J.*)). “In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the

circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*); *In re Alvin R.* (2003) 108 Cal.App.4th 962, 972 [“[r]eunification services need not be perfect”].)

Here, the Agency made the following efforts in support of reunification. The Agency provided Mother a referral for a psychological assessment and made repeated attempts to contact her. Mother, however, refused to make herself available. The mental health clinician attempted to contact Mother three times by phone and also by email. The Agency made several calls for housing referrals with Mother and provided Mother a referral to therapy and drug testing. The Agency provided Mother with bus and BART tickets to attend appointments and tests. Mother missed all 18 scheduled drug tests. She failed to have a psychological evaluation or engage with the mental health clinician. In sum, Mother had not complied with any aspect of her case plan. The Agency offered Mother mental health and substance abuse services and attempted to assist her in finding housing. Mother failed to engage and refused any and all attempts at assistance.

Mother also continued to show signs of mental illness. In August 2018, Mother went to the Concord Police Station to report her children missing, even though she knew they were in foster care. Mother also demanded three million dollars from the social worker. She stated she had been drugged and raped and was pregnant.

On this point, and as mentioned above, Mother argues for the first time on appeal that the Agency may have failed to diagnosis her correctly with anosognosia. We see no basis for relief. Even assuming anosognosia would have been the correct diagnosis, Mother fails to explain how the Agency could or should have diagnosed that particular condition when Mother steadfastly refused to submit to a psychological evaluation or counseling.

Mother also argues this is an atypical case and the court should have continued providing services for an 18-month period because Mother’s mental health prevented her from accessing and receiving services. Mother claims the Agency’s failure to continue services was unreasonable, relying on the following authorities. We are not persuaded.

In *In re K.C.* (2012) 212 Cal.App.4th 323 (*K.C.*), the appellate court found the social services agency had not provided sufficient assistance to a parent in obtaining a

psychotropic medication evaluation. The agency's "only attempt" to secure the medication was to send the parent to a public clinic and when he was rejected on three separate visits, the agency made no attempt to help the parent obtain other services. (*Id.* at p. 329.) Thus, the agency unreasonably delegated the burden of finding and obtaining suitable services to the parent. (*Id.* at p. 330.) Here, by contrast, the social worker and clinician both reached out to Mother multiple times in attempting to engage her in counseling. The Agency set up 18 drug tests that Mother failed to attend, and the Agency attempted to connect her with housing services.

Patricia W. v. Superior Court (2016) 244 Cal.App.4th 397 (*Patricia W.*) involved the termination of reunification services and permanent placement of a child. (*Id.* at pp. 420–421.) Division Two of this court concluded the social services agency had failed to provide reasonable reunification services to Patricia W., a mentally ill parent who suffered from schizophrenia and heard voices directing her to kill her child. (*Id.* at pp. 403, 405, 420.) Division Two concluded that the agency was required to provide services to help Patricia W. obtain medication and treatment as part of her reunification plan, but noted there was no evidence in the record diagnosing Patricia W.'s mental illness because the agency's report did not adequately summarize her condition, treatment options, or medication requirements. (*Id.* at p. 423.) Not only did the agency fail to order a psychological evaluation as part of the case plan (*ibid.*), but it also failed to ascertain what medication Patricia W. should have been taking and if she was off her medication (*id.* at p. 424). As Division Two recognized, the agency should have provided services tailored to the family, but could not and did not do so without a clear diagnosis and treatment plan for the mother's mental illness. (*Id.* at pp. 423–424.)

Here, unlike the situations in *Patricia W.* and *K.C.*, the Agency created a case plan to address Mother's mental health and other needs. It required a psychological evaluation and had a mental health clinician reach out to Mother several times. The Agency also ordered drug testing and substance abuse treatment. Finally, the Agency attempted to assist Mother in addressing her chronic homelessness.

Mother's criticism of the Agency's efforts does not establish a lack of substantial evidence supporting the juvenile court's finding. Even assuming the Agency could have done more, the services the Agency did provide were reasonable under the circumstances of this case. (*Misako R.*, *supra*, 2 Cal.App.4th at pp. 547–548.)

It bears emphasis that reunification services are voluntary and cannot be forced on an unwilling parent. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1233.) A social worker is not required to “ ‘take the parent by the hand and escort him or her to and through classes or counseling sessions.’ ” (*Ibid.*) Here, the Agency took reasonable steps to guide Mother to appropriate mental health and housing services, but Mother refused to take advantage of all that was offered to her.

Thus, the juvenile court's finding that reasonable services were provided is supported by substantial evidence. Despite the more than 12 months of offered services, Mother was unable to provide a safe and stable home for the twins or to adequately cope with her mental health and substance abuse issues. Indeed, as the court found, “the only evidence before the Court is that mother continues to have untreated significant mental health issues and substance abuse issues and that she continues to be a substantial danger to the safety and welfare of her children.” On this record, we see no basis for upsetting the court decision below.

DISPOSITION

The petition for writ of mandate is denied on the merits. (§ 366.26, subd. (l)(1)(c); Cal. Rules of Court, rule 8.452.) The request for a stay is denied. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

Fujisaki, J.

We concur:

Siggins, P.J.

Jenkins, J.

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